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South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

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STATE DOCUMENTS

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NOTE: Bill summaries included in this document are prepared by the staff of the South Carolina House of Representatives and are not the expression of the legislation's sponsor(s) or the House of Representatives. The summaries are strictly for the internal use and benefit of members of the House of Representatives and are not to be construed by a court of law as an expression of legislative intent.

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HOUSE WEEK IN REVIEW

The House of Representatives concurred in Senate amendments to H.3681, pertaining to the **TERMINATION OF PARENTAL RIGHTS**, and ordered the bill enrolled for ratification. This bill includes under the grounds for termination of parental rights, the conviction of a parent for the murder of the child's other parent. The legislation also authorizes the Department of Social Services to file an action for termination of parental rights without first seeking the court's approval of a change in a permanency plan or an amendment of a placement plan.

The House concurred in Senate amendments to H.3516 and ordered the bill enrolled for ratification. The legislation expands **CONCURRENT JURISDICTION FOR MAGISTRATES** by adding that magistrates have concurrent jurisdiction in actions for damages arising from a person's failure to return leased or rented personal property within seventy-two hours after the expiration of the lease or rental agreement, such damages to be based on the loss of revenue or replacement value of the property, whichever is less, if the damages claimed do not exceed seven thousand five hundred dollars; however, the lease or rental agreement must set forth the manner in which the amount of the loss of revenue or replacement value of the item leased or rented is calculated.

The House and Senate approved the conference committee report on H.3617, pertaining to **PRENEED BURIAL CONTRACTS**, and ordered the bill enrolled for ratification. This bill creates the Preneed Funeral Loss Reimbursement Fund and to reimburse those who have suffered financial loss with regard to preneed funeral contracts as a result of the misfeasance, fraud, default, failure, or insolvency of a South Carolina funeral home or South Carolina funeral director. The fund is composed of service charges imposed on preneed contracts as provided. The bill revises transfer procedures for trust funds held pursuant to preneed burial contracts. The bill provides penalties for entering into preneed burial contracts without proper licensure.

The House adopted Resolution H.4834 to express the sense of the House that **NO PERMANENT LAW (PART II PROVISIONS) SHOULD BE INCLUDED IN THE GENERAL APPROPRIATIONS BILL** for Fiscal Year 2004-2005, when the bill is under consideration in the House beginning the week of March 8, 2004.

The House amended, approved, and sent to the Senate H.3858, the "**VESTED RIGHTS ACT.**" This legislation provides for conditions for the establishment of vested rights in certain land developments to secure the reasonable expectations of landowners who make significant investment in site evaluation, planning, development costs, consultant fees, and engineering or architectural expenses to meet land development standards for site plan approval under existing local government ordinances and development agreements. The legislation provides that on or before July 1, 2005, a local government body: (1) shall amend its local land development regulations and ordinances adopted pursuant to this chapter to provide for the establishment of a vested right in an approved site specific development

plan; and (2) may amend its local land development regulations and ordinances to provide for establishment of a vested right in an approved phased development plan. The bill provides for standards and conditions under which vested property rights are established which allow the commencement and completion of development and use of property pursuant to a site-specific development plan or an approved phase development plan. The legislation provides for the local government acts and factors triggering a vested right. The bill places limits on the duration of vested rights. The legislation provides that a vested right attaches to and runs with the property.

The House amended, approved, and sent to the Senate **H.4650**, a bill pertaining to **CONVERSION OR DOMESTICATION OF CORPORATIONS** in South Carolina. This bill establishes new provisions for the domestication in South Carolina of a foreign corporation. Under the legislation, a foreign corporation may become a domestic corporation subject to the South Carolina Business Corporation Act by filing with the Secretary of State (1) articles of domestication and (2) an initial annual report. When a foreign corporation becomes a domestic corporation, articles of dissolution or the equivalent must be filed within five business days in the state where previously incorporated. Under the new provisions, a domesticated corporation is legally recognized as the same entity that existed prior to the domestication. The legislation also establishes new provisions for conversions and mergers of corporations, partnerships, and limited liability partnerships.

The House amended, approved, and sent to the Senate **H.3778**, a bill pertaining to the **REMOVAL OF VEHICLES DISABLED IN TRAFFIC COLLISIONS**. The bill provides that law enforcement officers or authorized employees of the Department of Transportation may remove from the traveled way all disabled vehicles and vehicles involved in an accident or a collision and any debris caused by motor vehicle traffic collisions where it can be accomplished safely and will result in the improved safety or traffic flow upon the road. However, where a vehicle has been involved in an accident or collision resulting in great bodily injury or death to a person, the vehicle shall not be moved until it is authorized by the investigating law enforcement officer. The State, its political subdivisions, and its officers and employees are not liable for any damages to vehicles that result from the removal unless the removal was carried out in a reckless or grossly negligent manner. The vehicle owner and any driver or carrier of a vehicle removed under these provisions shall bear all reasonable costs of removal. The bill provides that, if a disabled vehicle or a vehicle involved in an accident or a collision resulting only in damage to a vehicle is obstructing traffic, the driver of the vehicle shall make every reasonable effort to move any vehicle that is capable of being driven safely off the roadway so as not to block the flow of traffic. The driver or any other person who has moved a motor vehicle to facilitate the flow of traffic before the arrival of a law enforcement officer shall not be considered liable or at fault regarding the cause of the accident or collision solely by reason of moving the vehicle. State and local authorities may erect signs along highways and streets that instruct the public of these responsibilities regarding disabled vehicles. The bill provides that any person operating a vehicle from which any substances or cargo, excluding water, have fallen or escaped, which would constitute an obstruction or injure a vehicle or otherwise endanger travel upon the public highway, shall make every reasonable

effort to immediately cause the public highway to be cleaned of all substances and shall pay any costs for the cleaning. If the person immediately does not cause the public highway to be cleaned, the Department of Transportation or any law enforcement officer may, without the consent of the owner or carrier of the substance or cargo, remove the substance from the public highway if the substance or cargo is blocking the public highway or endangering public safety. The State, its political subdivisions and their officers and employees are not liable for any damages to the substance or cargo that may result from the removal or disposal of the substance or cargo unless the removal or disposal was carried out recklessly or in a grossly negligent manner. The owner, driver of the vehicle, or carrier of the substance or cargo removed under this subsection shall bear all reasonable costs of its removal and subsequent storage or disposition. The vehicle and debris removal provisions in this legislation are applicable statewide. No other governmental entity may enact or enforce conflicting ordinances or impose more stringent requirements than those provided under the legislation.

The House approved and sent to the Senate H.4686, a bill providing for an **INCREASE IN MAXIMUM MONETARY PENALTY FOR TRANSFER OF A CASE TO MAGISTRATES OR MUNICIPAL COURT**. This bill increases from five thousand to five thousand five hundred dollars the maximum monetary penalty for transferring a case from general sessions court to magistrates or municipal court.

The House amended, approved, and sent to the Senate H.4482, the **"FEDERAL DEFENSE FACILITIES UTILIZATION INTEGRITY PROTECTION ACT."** The bill provides processes and procedures whereby local planning departments and officials must consider certain matters and take certain actions regarding development in areas contiguous to federal military installations located in South Carolina. These provisions are intended to ensure that development in areas near these installations is conducted in a coordinated manner and considers federal military interests in planning and zoning decisions. The bill requires that at least thirty days before the public hearing regarding such development, a request for a written recommendation addressing certain areas relating to the development must be sent to the commander of the federal military base, installation, or airfield. If no response is received by the time of the hearing, it is presumed that there will be no adverse effect.

The House amended, approved, and sent to the Senate H.4697, a bill concerning **DIRECT PURCHASES OF FOREST PRODUCTS FROM LANDOWNERS FROM LANDS IN THIS STATE**. This bill provides that a person who purchases trees or forest products directly from a landowner from lands in South Carolina, and has received payment for the forest products shall, within forty-five days of the receipt, make payment in full to the landowner. The bill includes procedures for the landowner in the event that such payment is not received, and includes monetary penalties and terms of imprisonment which may be imposed against the purchaser for violation of the payment requirement. The bill also includes restitution to the victim as a mandatory condition of the sentence imposed

The House approved and sent to the Senate H.4591, a bill regarding **USE OF CROSSBOWS BY DISABLED PERSONS**. Currently, the use of crossbows for

hunting certain game by persons who suffer from upper limb disabilities is legal if the person has a certain written statement from a neurologist or orthopedist. This bill adds that the statement may also come from a rheumatologist.

The House approved and sent to the Senate H.4692, a bill which **MAKES NUMEROUS REVISIONS TO THE SOUTH CAROLINA COMMERCIAL FEED ACT**, including but not limited to revisions which clarify the Act and bring its provisions into alignment with feed laws in other states.

HOUSE COMMITTEE ACTION

EDUCATION AND PUBLIC WORKS

The Education and Public Works Committee adjourned debate on H.3714, the **SOUTH CAROLINA EDUCATION AND ECONOMIC DEVELOPMENT ACT**. (This bill was previously reported by the Committee favorable with amendment, and was subsequently recommitted to the committee.)

JUDICIARY

The full House Judiciary Committee met on Tuesday, February 24, and reported out several bills.

The committee gave a report of favorable with amendment on H.4657, a bill providing for **NO RECOGNITION OF SAME SEX MARRIAGES UNDER SOUTH CAROLINA LAW**. The legislation provides that marriage in this state and its political subdivisions is exclusively defined as a union between one man and one woman. The legislation provides that public acts, records, judicial proceedings, licenses issued by another jurisdiction, and any other governmental recognition of same sex marriage are of no legal force or effect and will not be recognized by this state or its political subdivisions in accordance with the strong public policy of South Carolina. The legislation provides that the recognition or extension by this state or its political subdivisions of the specific statutory benefits of a legal marriage to nonmarital relationships between persons of the same sex or different sexes is against the strong public policy of this state and its political subdivisions. The legislation voids any public act, record, or judicial proceeding of this state, its political subdivisions, and any other jurisdiction that would provide for such an extension.

The committee gave a report of favorable with amendment on S.390, a bill regarding **CHILDREN'S TRUST FUND EXPENDITURES**. Under the legislation, the Children's Trust Fund is authorized to award grants to private nonprofit organizations and qualified state agencies to fulfill its objectives. The legislation authorizes the fund's board to award grants to programs that enhance or promote

the adoption of special needs children in state custody. The bill removes the limitation on the amount of Children's Trust Fund revenues that may be disbursed.

The committee gave a favorable report on H.4642, a bill designating the third Friday in September of each year as **POW/MIA RECOGNITION DAY** in South Carolina. The bill provides that the Governor shall issue a proclamation each year calling upon the people of South Carolina to observe the day with appropriate ceremonies and activities. The bill provides that on the recognition day the flags atop state and local public buildings including the State Capitol Building shall be flown at half-staff until noon.

The committee gave a report of favorable with amendment on H.3702 a joint resolution proposing an amendment to the South Carolina Constitution so as to provide for a **CONSTITUTIONAL RIGHT REGARDING FISH AND WILDLIFE MANAGEMENT**. This joint resolution proposes an amendment to the enumeration of rights under Article I of the South Carolina Constitution by adding a new section establishing that fish and wildlife management, including the taking of fish and game, must be consistent with the State's duty to protect this heritage and its duty to conserve wild animals, birds, and fish.

The committee gave a report of favorable with amendment on H.4720, a bill enacting the "**UNIFORM ELECTRONIC TRANSACTIONS ACT.**" The legislation provides for: definitions, legal effect and enforceability of an electronic record and signature; changes or errors in transmission of an electronic record; compliance of an electronic record or signature with other laws affecting validity or retention or receipt of a record or signature; use of electronic records by governmental agencies; promulgation of regulations by the Budget and Control Board to enhance the utilization of electronic records and signatures; and development by the Secretary of State of model procedures and promulgation of regulations for secure electronic transactions, including licensing of third parties; provisions to make the Computer Crime Act applicable to the Uniform Electronic Transactions Act. The legislation also repeals the South Carolina Electronic Commerce Act.

The committee gave a report of favorable with amendment on H.3957, a bill providing for **REVISED TERMS OF SERVICE FOR MUNICIPAL JUDGES**. The bill provides that each municipal judge must be appointed by the municipal council to serve for a term set by the council of not less than two years and not more than four years. Under current law a municipal judge serves for a term set by the council that is not to exceed four years.

LABOR, COMMERCE AND INDUSTRY

The full House Labor, Commerce and Industry Committee met on Tuesday, February 24, and reported out several bills.

The committee gave a favorable report on H.4413, a bill pertaining to **CASUALTY INSURANCE RATES**. This bill revises criteria for the making of rates for casualty

insurance, so as to provide that consideration must be given to assessments, such as the Guaranty Fund, Wind and Hail Joint Underwriting Association, and similar mechanisms when making the rates. The bill provides that proposed rates changes where the sole factor for the change is the impact of a revised assessment does not constitute a rate increase for purposes of the requirement that an insurer make or issue a contract or policy only on rates which are in effect.

The committee gave a report of favorable with amendment on H.4420, a bill targeting the **MANIPULATION OF EMPLOYER EXPERIENCE RATING** under the State Unemployment Tax Act for the purpose of avoiding the full tax rate owed by the employer. Under experience rating, the rate that an employer owes under the State Unemployment Tax Act is calculated using such factors as the unemployment insurance benefits paid to former employees. The legislation prohibits the practice of transferring employment experience of all or part of an employer's payroll into a shell company that has a low tax rate under the State Unemployment Tax Act. The legislation requires employers who transfer employees to a new business to also transfer the unemployment experience of the first company if the two employers are under substantially common ownership, management, and control. The legislation also prohibits the practice of purchasing a business with a desirable employer experience record for the sole purpose of starting a different business while using the experience record of the discontinued business for the purpose of establishing a lower tax rate.

The committee gave a favorable report on H.4081, a bill regarding **LABOR OR MATERIAL FOR THE IMPROVEMENT OF REAL ESTATE**. This bill provides that an engineer, architect, or landscape architect who performs or provides professional services for the improvement of real estate is considered to have furnished labor or material for the improvement of real estate. The bill further provides that, under certain conditions, a real estate broker who performs professional services for the owner of real estate incident to a real estate transaction pursuant to a written agreement has furnished labor or material for the improvement of real estate.

The committee gave a favorable report on H.4615, a bill **AUTHORIZING THE PIEDMONT MUNICIPAL POWER AGENCY TO OPERATE BEYOND ITS ORIGINAL FIFTY-YEAR LIMIT** to coordinate with the license extension for the operation of the Catawba Nuclear Plant that Duke Power obtained from federal regulators. This bill revises provisions relating to contracts to buy power between a joint power and energy agency and its constituent municipalities, so as to provide for the extension of contracts to buy power beyond the original fifty-year limit when the date of operation of the electrical utility agent is extended by all agencies having jurisdiction over such an extension.

The committee gave a report of favorable with amendment on H.4573. This joint resolution extends the term of existence for the **COMMERCIAL MOBILE RADIO SERVICE (CMRS) EMERGENCY TELEPHONE ADVISORY COMMITTEE** to August 1, 2007, rather than August 1 of this year. The legislation also allows members of the committee to be appointed for more than one subsequent term.

H.4472, the "**SOUTH CAROLINA HEALTH CARE FINANCIAL RECOVERY ACT**", was recommitted to the Insurance Subcommittee.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

The Medical, Military, Public and Municipal Affairs Committee reported favorable with amendment on H.4399, the **CHILDHOOD LEAD POISONING PREVENTION AND CONTROL ACT**. As reported by the Committee, this bill updates the Childhood Lead Poisoning Prevention and Control Act and makes technical changes to conform to Centers for Disease Control and Prevention (CDC) definitions and program standards as well as U.S. Environmental Protection Agency (EPA) standards for lead based substances.

The bill also requires a laboratory doing business in this State to notify DHEC of the results of any blood lead analyses conducted on children under six years old. The report must be made to DHEC within 30 days of the analysis. Some physicians send their lead test samples to the DHEC laboratory but many use private labs. These labs already report positive tests to DHEC.

In addition, the bill updates the procedures for the issuance and execution of an administrative warrant to investigate a property involving a lead poisoning case to be consistent with the way DHEC handles investigations in other areas.

This bill also provides that, in addition to a penalty imposed by a magistrate for a misdemeanor violation, anyone who violates a provision of this article or a final determination or order of DHEC is subject to a civil penalty not to exceed \$1000.

The provisions of this article are contingent upon the appropriation of state general funds or the availability of financial support from other sources to support the program. Currently, the CDC provides funding for most of DHEC's lead poisoning prevention efforts.

The Committee reported adjourned debate on S.104, a bill regarding **TATTOOING** in South Carolina. (This bill was previously reported out from the Committee favorable with amendment. Subsequently, the bill was recommitted to the committee.)

BILLS INTRODUCED IN THE HOUSE THIS WEEK

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

H.4845 DEPARTMENT OF NATURAL RESOURCES BOARD Rep. Kirsh

This bill adds to the Board of the Department of Natural Resources one member, who must be appointed from the membership of the South Carolina Association of Conservation Districts.

EDUCATION AND PUBLIC WORKS

S.764 CORPORATE-OWNED FLEET MOTOR VEHICLES Sen. Ryberg

Regarding corporate-owned fleet motor vehicles, this bill amends the statutory definition of "fleet" to mean fifty or more, rather than two hundred or more, marked private passenger motor vehicles or property carrying vehicles with empty weight of up to 22,000 pounds and a gross vehicle weight of up to 26,000 pounds, owned or long-term leased by a corporation or other legal entity, and registered in South Carolina.

H.4838 HOME OWNERSHIP LICENSE PLATES Rep. Hamilton

This bill authorizes and provides for "Homeownership: The American Dream" special license plates.

H.4839 CAR DEALERSHIP FACILITIES Rep. Loftis

This bill provides that the statutorily required "fixed" location for a motor vehicle dealer's business includes a multipurpose or multitenant building or premises if such established place for conducting the motor vehicle business is actually located in a separate, segregated, walled unit of that building or premise.

H.4848 VIETNAM VETERAN LICENSE PLATES Rep. McCraw

This bill authorizes and provides for "Vietnam Veteran" special license plates.

JUDICIARY

H.4831 COMPUTERIZED DRAWING AND SUMMONING OF JURORS

Rep. W. D. Smith

This bill provides that the physical presence of all the jury commissioners is not required at the computerized drawing and summoning of jurors if the governing body of the county establishes a secure procedure allowing for their participation by

other means. The computerized drawing and summoning of jurors must take place in the office of the clerk of court as a public event to ensure the absolute integrity of the random selection process. The Supreme Court shall direct by order the

appropriate procedures required to implement the provisions regarding computerization.

H.4832 *IDENTITY FRAUD IN OBTAINING EMPLOYMENT* Rep. Altman

This bill provides that a person is guilty of identity fraud when he uses identifying information of another person for the purpose of obtaining employment.

H.4835 *INVESTIGATION OF JUDGES BY THE JUDICIAL MERIT SELECTION COMMISSION* Rep. Davenport

This bill provides that upon request by at least ten members of the General Assembly and, it is the responsibility of the Judicial Merit Selection Commission to investigate possible malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity of a judge under the jurisdiction of the commission. Upon completion of its investigation, the commission shall issue a formal report to the General Assembly with a recommendation for no action with an explanation, a recommendation for a private or public reprimand by the commission, or a recommendation that the judge be removed from office. Within three weeks of receipt of the commission's recommendation, the General Assembly shall meet in joint session for the purpose of accepting or rejecting the recommendation.

H.4836 *PROPOSED CONSTITUTIONAL AMENDMENT ON REMOVAL OF JUDGES UPON RECOMMENDATION OF JUDICIAL MERIT SELECTION COMMISSION* Rep. Davenport

This joint resolution proposes amending the provisions in the South Carolina Constitution regarding the removal of judges by adding that the members of the General Assembly, in joint session, may vote to remove any judge after an investigation by the Judicial Merit Selection Commission if the commission recommends removal for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity.

H.4842 *RENEWAL OF CONCEALABLE WEAPONS PERMITS* Rep. E. H. Pitts

This bill revises provisions relating to the issuance of concealable weapons permits, so as to provide that if a permit holder fails to submit an application to renew his permit within twelve months of the date it expires, he must submit an initial application for a permit to obtain a permit. The bill provides that once a permit expires, the holder of the permit may not legally carry a concealable weapon.

**S.532 *PROPOSED CONSTITUTIONAL AMENDMENT ON LIQUOR SALES*
Senate Judiciary Committee**

This joint resolution proposes an amendment to the provisions of the South Carolina Constitution governing liquor sales so as to eliminate minibottle requirements and

provide instead for the sale of alcoholic liquors and beverages in containers of such size as the General Assembly considers appropriate.

**H.4846 NOTIFICATION OF GENERAL ASSEMBLY MEMBERS OF
AVAILABILITY OF AGENCY REPORTS** Rep. Talley

This bill provides that an agency required by law to report to the General Assembly shall prepare its report and notify the members of the General Assembly by mail or email that the report is available upon request.

LABOR, COMMERCE AND INDUSTRY

**H.4837 GLASS AND GLAZING NOT INCLUDED UNDER "GENERAL
CONTRACTORS-BUILDING" CLASSIFICATION** Rep. Davenport

This bill revises provisions relating to license classifications and subclassifications for contractors, so as to specify that the "General Contractors-Building" classification does not include any work done under the subclassification of glass and glazing.

H.4841 HEALTH CARE CHARGES FOR PATIENTS WITHOUT INSURANCE
Rep. Limehouse

This bill provides that health care providers may charge patients without health insurance the same price for a particular service or procedure that the provider receives for that service or procedure from any health insurer or self-insurer with which the provider has agreed to provide services after all required contract adjustments. The health insurer or self-insurer may not penalize or sanction the provider for this action or take the position that the standard charge of the provider has been reduced because the provider elected to charge a patient without health insurance the same net price the provider receives for that service or procedure from the insurer after any required contract adjustments.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

H.4840 ORGAN AND TISSUE DONATION Rep. Limehouse

This bill makes numerous revisions to the *Uniform Anatomical Gift Act*, regarding organ and tissue donation.

WAYS AND MEANS

H.4847 CARRY-FORWARD FOR UNUSED TAX CREDITS Rep. J.R. Smith

This bill extends, under certain conditions, the ten year carry-forward period for unused economic impact zone investment tax credits against state income tax.

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